

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. CAA-5-99-003
)
Nylonge Corporation) Proceeding to Assess Administrative
Elyria, Ohio) penalties under section 113(d) of
) the Clean Air Act, 42 U.S.C. Section
Respondent) 7413(d)

COMPLAINT
AND
NOTICE OF OPPORTUNITY FOR HEARING ON
PROPOSED ADMINISTRATIVE ORDER ASSESSING PENALTIES

US ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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REGIONAL OFFICE

This is a civil administrative action instituted pursuant to Section 113(d) (1) of the Clean Air Act (Act), 42 U.S.C. § 7413(d) (1), and "The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, against Respondent, Nylonge Corporation (Nylonge or Respondent).

Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes the Administrator of the United States Environmental Protection Agency (Administrator) to issue an Administrative Complaint assessing a civil administrative penalty against any person whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement of the Ohio State Implementation Plan (Ohio SIP) promulgated pursuant to Section 110 of the Act, 42 U.S.C. § 7410, and the applicable Federal regulations. The Administrator has lawfully delegated the authority to initiate this action to the Regional Administrator, Region 5, who has lawfully delegated it to the Director of the Air and Radiation Division,

United States Environmental Protection Agency, Region 5, (EPA or Complainant), who hereby issues this Complaint.

STATUTORY AND REGULATORY BACKGROUND

1. The Act establishes a regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare of its population. 42 U.S.C. § 7401(b) (1).

2. The Act required EPA to establish a list of pollutants which cause or contribute to air pollution which may be reasonably anticipated to endanger public health or welfare. 42 U.S.C. § 7408(a).

3. Section 109(a) of the Act, 42 U.S.C. § 7409(a), required EPA to establish primary and secondary national ambient air quality standards (NAAQS) for criteria air pollutants, including primary air quality standards to protect the public health and secondary air quality standards to protect the public welfare.

4. In accordance with Section 109 of the Act, 42 U.S.C. § 7409(a), EPA promulgated NAAQS for criteria air pollutants which are codified at 40 C.F.R. Part 50.

5. To achieve the objectives of the Act and to attain and maintain the NAAQS, Section 110 of the Act, 42 U.S.C. § 7410, requires each State to submit to EPA for approval a State Implementation Plan (SIP) containing regulations which will assure attainment and maintenance of the NAAQS. Pursuant to Section 113(a) and (b) of the Act, 42 U.S.C. § 7413(a) and (b), once a SIP has been approved by EPA, the requirements of the SIP are federally enforceable.

6. Part D of the Act, 42 U.S.C. §§ 7501-7515, governs preconstruction review and permitting applicable to new or major stationary sources which emit criteria air pollutants regulated under the Act for areas designated, in accordance with Section 107(d) of the Act, 42 U.S.C. § 7407(d), as nonattainment with respect to the NAAQS. Part D specifies the requirements to be codified by States in their SIPs to bring nonattainment areas into attainment by requiring each new or modified source to obtain a permit which limits emissions in a way to facilitate progress towards attainment of the NAAQS.

7. In accordance with Part D, the Administrator promulgated regulations at 40 C.F.R. Part 51, Subpart I, which set forth the requirements for preparation, adoption and submittal of SIP provisions relating to permitting new and modified sources.

8. On October 31, 1980, EPA conditionally approved Ohio's Part D SIP. A condition of the approval was that each permit issued by Ohio satisfy the requirements of Part D of the Act. 45 Fed. Reg. 72121.

9. As part of Ohio's Part D SIP, EPA conditionally approved Ohio Administrative Code (OAC) 3745-31-05(A), 45 Fed. Reg. 72136, which governs the criteria for decisions regarding issuance of permits to install and includes, among other provisions, the requirement that the installation or modification and operation of the air contaminant source . . . will:

(2) not result in a violation of any applicable laws, including but not limited to:

(d) requirements regarding non-attainment areas, as defined in Section 171 et seq. of the Clean Air Act, and the regulations promulgated thereunder including:

(ii) the emission offset policy, designated as "Appendix S," as promulgated at 51.08 Code of Federal Regulations.

10. Appendix S sets forth U.S. EPA's Interpretive Ruling of the new source requirements required by Part D of the Act. Appendix S allows the construction of a major stationary source in an area designated as nonattainment only if the following conditions are met:

- 1) the source meets an emission limit defined as the lowest achievable emission rate (LAER);
- 2) the owner or operator of the proposed source demonstrates that all major stationary sources owned and operated by such person (or by any entity controlling, controlled by, or under common control with such person), in the same state as the proposed source, are in full compliance with emission limitation applicable under the Act (or are in compliance with an expeditious schedule which is Federally enforceable or contained in a Consent Decree);
- 3) intrapollutant emission reductions (offsets) from existing sources in the area of the proposed source (whether or not under the same ownership) are required such that there will be reasonable progress toward attainment of the applicable NAAQS (i.e., that emissions from the source are offset by a reduction of more than equivalent emissions of the same pollutants); and
- 4) the emission offsets produce a positive net air quality benefit in the affected area. 40 C.F.R. Part 51, Appendix S, Section IV(A) and (E).

11. Major stationary source is defined as any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act. 40 C.F.R. § 52.24(f) (4) (1) (a).

12. Volatile organic compounds (VOCs) are subject to regulation under the Act. 40 C.F.R. §§ 50.9, 52.21(b) (30) and 52.24(f) (18).

13. OAC 3745-31-02, which is part of the federally approved Ohio SIP, provides that no person shall cause, permit, or allow the installation of a new source of air pollutants or cause, permit or allow the modification of an air contaminant source without first obtaining a permit to install.

14. OAC 3745-31-03(A) lists twenty-one source categories that are exempt from the permit to install requirement. The list of exempted source categories in OAC 3745-31-03(A) does not include cellulose sponge manufacturers.

15. On September 18, 1974, U.S. EPA promulgated 40 C.F.R. § 52.23. 39 Fed. Reg. 33512, as amended on June 28, 1989, at 54 Fed. Reg. 27285. Pursuant to this regulation, failure to comply with any approved regulatory provision of a SIP, or with any permit condition issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources, or with any permit limitation or condition within an operating permit issued under an EPA-approved program that is incorporated into the SIP, shall render the person so failing to comply in violation of a requirement of the applicable implementation plan and subject to enforcement action under Section 113 of the Act.

16. On June 5, 1998, EPA issued a Notice of Violation (NOV) to Nylonge citing Nylonge for violations of Ohio's federally enforceable Part D SIP provisions and for violations of 40 C.F.R. § 52.23.

GENERAL ALLEGATIONS

17. The Statutory and Regulatory Background statements contained in paragraphs 1-16 are incorporated herein by reference.

18. Respondent, Nylonge, is an Ohio corporation doing business in the State of Ohio.

19. Nylonge primarily manufactures cellulose sponges at its facility located at 1301 Lowell Street, Elyria, Lorain County, Ohio (the Facility).

20. Nylonge is a "person" as defined in the Act, 42 U.S.C. § 7602, and the Ohio SIP, OAC 3745-15-01(U).

21. The Facility is an "air contaminant source" as that term is defined in OAC 3745-31-01.

22. "Air pollutants" as that term is defined in OAC 3745-15-01(C) are emitted from the Facility.

23. Carbon disulfide is a "VOC" as that term is defined in 40 C.F.R. § 51.100(s).

24. On August 28, 1989, Nylonge applied to the Ohio Environmental Protection Agency (Ohio EPA) for a permit to install for the Facility.

25. On January 31, 1990, Ohio EPA issued the final permit to install to Nylonge. The permit to install contained an emission limit for carbon disulfide of 330.7 tons per year. *

26. In 1990, the Facility had the "potential to emit" as that term is defined in 40 C.F.R. Part 51, Appendix S, II.A.3., more than 100 tons per year of carbon disulfide.

27. On March 1, 1990, U.S. EPA Region 5 notified the Ohio EPA that carbon disulfide is a VOC.

28. By letter dated March 15, 1990, the Ohio EPA notified Nylonge of U.S. EPA's determination that carbon disulfide is a VOC. Ohio EPA further

indicated that facilities emitting over 100 tons per year in a nonattainment area would be a major source which would trigger the conditions of emission offset policy.

29. From 1990 until May 6, 1996, Lorain County, in which the Facility is located, was nonattainment for ozone.

30. On February 27, 1995, Nylonge submitted an application for a permit to install for a new sponge line.

31. On August 16, 1995, Nylonge received its final permit to install. The August 16, 1995 permit to install limits the entire Facility VOC emissions to 99.4 tons per year.

32. In 1992, Nylonge emitted 143 tons per year of carbon disulfide at the Facility.

33. In 1993, Nylonge emitted 116 tons per year of carbon disulfide at the Facility.

34. In 1994, Nylonge emitted 112 tons per year of carbon disulfide at the Facility.

35. In 1995, Nylonge emitted 119 tons per year of carbon disulfide at the Facility.

36. From 1992 through 1995, Nylonge was a "major stationary source" as that term is defined in 40 C.F.R. Part 51, Appendix S, II.A.4.

COUNT I

37. The allegations contained in paragraphs 1 through 36 are incorporated herein by reference.

38. In 1989, when Nylonge applied for its permit to install, the Facility was a major stationary source.

39. In 1990, when Nylonge received its permit to install, the Facility was a major stationary source.

40. In 1989, Lorain County was nonattainment for ozone.

41. In 1990, Lorain County was nonattainment for ozone.

42. In 1989 and 1990, the Facility had the potential to emit over 100 tons per year of carbon disulfide.

43. As a major stationary source in a nonattainment area, the Facility was subject to the provisions of the emission offset policy designated as Appendix S, 40 C.F.R. Part 51.

44. The January 31, 1990 permit to install for the Facility was not valid because it failed to meet requirements for permits issued in nonattainment areas, including the requirements contained in Appendix S, 40 C.F.R. Part 51, App. S (III and IV).

45. Construction and operation of the Facility without a valid permit to install from January 31, 1990 to February 27, 1995, when Nylonge submitted a PTI application seeking emission limits of less than 100 tons per year, constitutes a violation of Ohio SIP provision OAC 3745-31-05(A) (2) (d) and Section 110 of the Act.

COUNT II

46. The allegations contained in paragraphs 1 through 45 are incorporated herein by reference.

47. Nylonge's August 16, 1995 permit to install limited carbon disulfide emissions to 99.4 tons per year.

48. From August 16, 1995 until December 31, 1995, Nylonge emitted more than 99.4 tons per year of carbon disulfide.

49. Emissions of more than the permitted limit of 99.4 tons of carbon disulfide from August 16, 1995 until December 31, 1995 constitutes a violation of 40 C.F.R. § 52.23 and Section 110 of the Act.

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

50. Pursuant to Section 113(d) (1) of the Act, 42 U.S.C. § 7413(d) (1), the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the Civil Monetary Penalty Inflation Adjustment Rule at 61 Fed. Reg. 69362 (Dec. 31, 1996), the Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of the Act occurring on or before January 30, 1997, and \$27,500 for each violation of the Act occurring after January 30, 1997. The proposed civil penalty herein has been determined in accordance with the Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1991 (Penalty Policy), and Section 113(e) (1) of the Act, 42 U.S.C. § 7413(e) (1), which requires Complainant to take the following factors into consideration in determining the amount of any penalty to be assessed under Section 113: the size of Respondent's business, the economic impact of the proposed penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, the duration of the violations alleged in the Complaint as established by credible evidence (including evidence other than the applicable test method), payment by Respondent of

penalties previously assessed for the same alleged violations, the economic benefit of noncompliance, and the seriousness of the alleged violations (in addition to such other factors as justice may require).

51. After consideration of the factors set forth at Section 113(e) (1) of the Act and the Penalty Policy, and based upon the facts and circumstances alleged in this Complaint, U.S. EPA hereby proposes to issue to Respondent a Final Order Assessing Administrative Penalties assessing a penalty in the amount of \$104,250.00. *The Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors set forth above to particular cases. A copy of the Penalty Policy accompanies this Complaint. The penalty was calculated as follows:*

ECONOMIC BENEFIT COMPONENT

\$0

GRAVITY COMPONENT

Count I: Invalid Permit to Install (12-31-93¹ to 2-27-95²)
Appendix I to the Penalty Policy

Total Cost of Air Pollution Control is less than \$50,000
Construction without Permit - \$2,000/month
Failure to Obtain Offsets - \$3,000/month
Length of Violation = 15 months x \$5,000/month = \$ 75,000

Count I Total: \$ 75,000

Count II: Permit Limit Violations (8-16-95³ to 12-31-95)

¹ Five years before anticipated date of complaint filing. (There is a five year statute of limitations.)

² The date when Nylonge applied for a Permit to Install, with an emission limit of less than 100 tons per year.

³ Date of issuance of permit to install.

Penalty Policy

| | |
|---|------------------|
| 1. Actual or possible harm | \$ 5,000 |
| a. Level of violation 119/99.4 = 120% | |
| b. Toxicity of pollutant carbon disulfide ⁴ | \$ 15,000 |
| c. Sensitivity of environment moderate nonattainment for ozone (during period of violation) | \$ 12,000 |
| d. Length of violation 5 months | \$ 12,000 |
| 2. Importance to the Regulatory Scheme | \$ 0 |
| 3. Size of Violator \$8,802,398 ⁵ | \$ 20,000 |
| <u>Count II Total:</u> | <u>\$ 64,000</u> |
| TOTAL GRAVITY COMPONENT = | \$139,000 |

Gravity Adjustment Factors

25% Mitigation for Degree of Cooperation

TOTAL**\$104,250**

52. The proposed penalty of \$104,250.00 reflects a presumption of Respondent's ability to pay the penalty and to continue in business based on the size of its business and the economic impact of the proposed penalty on its business.

53. The Respondent may pay the penalty by certified or cashier's check, payable to Treasurer, the United States of America, and remit to:

United States Environmental Protection Agency, Region 5
P.O. Box 70753
Chicago, Illinois 60673

⁴ Listed as a HAP in Section 112 of the Act, also a VOC.

⁵ Net worth from Dun & Bradstreet

54. The check shall include the name of the case and the Docket Number on the check and be accompanied by a transmittal letter. Simultaneous with the payment of the check at the above address, the Respondent shall send copies of both the check and the transmittal letter to the following three addressees:

Regional Hearing Clerk
U.S. EPA, Region 5 (R-19J)
77 West Jackson Boulevard
Chicago, Illinois 60604

Cynthia A. King
Associate Regional Counsel
Office of Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Denny Dart
Environmental Engineer
Air and Radiation Division (AE-17J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

55. The penalty proposed in this Complaint has been developed based on the best information available to U.S. EPA at this time, and may be adjusted if the Respondent establishes bonafide issues of ability to pay or other defenses relevant to the appropriateness of the penalty.

OPPORTUNITY TO REQUEST A HEARING

56. Section 113(d) (2) of the Act, 42 U.S.C. § 7413(d) (2), requires that the Administrator of U.S. EPA provide to any person against whom the Administrator proposes to assess a penalty an opportunity to request a hearing on the proposed penalty. Accordingly, you have the right to request a hearing to contest any material fact alleged in the Complaint or to contest the

appropriateness of the amount of the proposed penalty. In order to request a hearing, you must specifically make such request in your Answer, as discussed in Paragraphs 57 through 61 below.

57. The hearing which you request regarding the Complaint will be held and conducted in accordance with the provisions of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, as amended by 57 Fed. Reg. 4316 (1992), a copy of which accompanies this Complaint.

ANSWER

58. To avoid being found in default, you must file a written Answer to this Complaint with the Regional Hearing Clerk, (R-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within thirty (30) calendar days of your receipt of this Complaint. In computing any period of time allowed under this Complaint, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays and Federal holidays shall be included, except when a time period expires on such, in which case the deadline shall be extended to the next business day.

59. Your Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint, or must state clearly that you have no knowledge regarding a particular factual allegation which you cannot admit, deny or explain, in which case the allegation will be deemed denied. Your Answer also specifically shall state:

1. The circumstances or arguments which you allege constitute grounds for defense;
2. The facts that you intend to place at issue; and

3. Whether you request a hearing discussed in Paragraphs 56 and 57, above.

60. Failure to respond to any factual allegation in this Complaint shall constitute admission of the alleged fact.

61. You must send a copy of your Answer and any documents subsequently filed in this action to Cynthia A. King, Associate Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Ms. King at (312) 886-6831.

62. If you fail to file a written Answer within thirty (30) calendar days of your receipt of this Complaint, the Administrator of U.S. EPA may issue a Default Order. Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of your right to a hearing. 40 C.F.R. § 22.17. The civil penalty proposed herein shall become due and payable without further proceedings sixty (60) days after the Default Order becomes the Final Order of the Administrator pursuant to 40 C.F.R. §§ 22.27.

SETTLEMENT CONFERENCE

63. Whether or not you request a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Denny Dart, U.S. EPA, Region 5, Air Enforcement and Compliance Assurance Branch (AE-17J), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Ms. Dart at (312) 886-1426.

64. Your request for an informal settlement conference does not extend the thirty (30) calendar day period during which you must submit a written Answer to this Complaint. You may pursue simultaneously the informal settlement conference and adjudicatory hearing processes. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such a conference shall be embodied in a Consent Order. Your agreement to a Consent Order Assessing Administrative Penalties shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.

65. Neither assessment nor payment of an administrative civil penalty shall affect your continuing obligation to comply with the Clean Air Act or any other Federal, State, or local law or regulation.

12/22/98
Date

for William L. MacDowell
Steve Rothblatt, Acting Director
Air and Radiation Division

In the Matter of Nylonge Corporation

Docket No. **CAA-5-99-003**

CERTIFICATE OF SERVICE

I hereby certify that I filed the original of the Clean Air Act Administrative Complaint and Notice of Opportunity for Hearing against Nylonge Corporation Docket No. **CAA-5-99-003** with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and have sent true and accurate copies of the complaint along with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, and a copy of the Penalty Policies (described in the Complaint) was sent via certified mail, return receipt requested to:

George Hrabik, Vice President
Nylonge Corporation
1301 Lowell Street
Elyria, Ohio 44035

P 564 485 824
Certified Mail Number

Regional Hearing Clerk
U.S. EPA, Region 5 (R-19J)
77 West Jackson Boulevard
Chicago, Illinois 60604

I also certify that a copy of the Order was sent by first class mail

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
1600 WaterMark Drive
Columbus, Ohio 43215-1034

US ENVIRONMENTAL PROTECTION AGENCY
REGION V

98 DEC 22 P2:43

RECEIVED
REGION V

on the 22nd Day of December, 1998

Régina Willes jbr
Shwanda Mayo, Secretary
ARD/AECAB/AECAS (MN/OH)